



THE ATTORNEY GENERAL
OF TEXAS

General C. Mean
~~EX-DEPUTY ATTORNEY GENERAL~~
ATTORNEY GENERAL

AUSTIN, TEXAS

February 20, 1939

Hon. Geo. W. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-313
Re: Expenses of district attorney
in trial of case outside his
district removed on change of
venue.

We are in receipt of your letter of February 8th in which you request our opinion whether the District Attorney of the 51st Judicial District is authorized to receive expenses while trying a case transferred on change of venue to the 32nd Judicial District.

The District Attorney is a constitutional officer. The office is authorized by Article 5, section 21, as follows:

"....The county attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts, as may be deemed necessary, and make provision for the compensation of district attorneys, and county attorneys; provided district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and prerequisites as may be provided by law....."

Article 3886-f, R. C. S., 1925 (Vernon's Annotated Revised Civil Statutes), same being Acts 1935, 44th Leg., 2nd C. S., p. 1710, ch. 442, provides compensation for District Attorneys and a portion of the statute provides:

"Nothing in this Act shall be construed so as to deprive District Attorneys of the

expense allowance allowed or which may hereafter be allowed by law."

Article 6820, R. C. S., 1925 provides:

"All District Judges and District Attorneys when engaged in the discharge of their official duties in any county in the state other than the county of their residence shall be allowed their actual and necessary expense while actually engaged in the discharge of such duties...."

not to exceed certain amounts as stipulated by said statute.

Provision is made by the terms of Article 6823, R. C. S., as amended, for the payment of traveling and other necessary expenses incurred by the various officers, assistants, deputies, etc.,

"in the active discharge of their duties."

We quote from Texas Jurisprudence, Vol. 34, p. 533, Sec. 116, as follows:

"An allowance for expense incurred, in addition to compensation fixed by the Constitution, may be valid and statutes provide for the necessary expense incurred by various State and County officers in the performance of their official duties."

The general duties of the District Attorney are provided by Article 25, C. C. P., 1925. We quote:

"Each district attorney shall represent the State in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within the county where such proceeding is had, he shall represent the State therein, unless prevented by other official duties."

We find no express language of the Legislature relative to the duties of the District Attorney where the venue is changed from his district. We believe, however, the language of Article 6820, supra, construed in the light of the other statutes and authorities, shows such expense was contemplated. It is obvious the best interests of the State would be served by the presence and participation in the trial by the prosecuting attorney of the county wherein the case originated.

In view of the foregoing, it is the opinion of this Department that the District Attorney may collect his actual and necessary expense where he follows a case transferred from a county of his district, not to exceed

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the amount prescribed by law, and that the District Attorney of the 51st Judicial District is entitled to receive his actual necessary expenses while trying a case transferred on change of venue to the 32nd Judicial District.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /a/ Benjamin Woodall
Benjamin Woodall
Assistant

BENJAMIN WOODALL

APPROVED:
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS